IN THE HIGH COURT OF UTTARANCHAL,

AT NAINITAL.

A.O. No. 892/2001

(Old No. 996/2000)

The New India Assurance Co. Ltd.
Haldwani .. Appellant.

Vs.

1- Pooran Singh Kathait S/o Madho Singh,
2- Smt. Ganga Devi W/o Pooran Singh Kathait,
Both R/o Village Khamari
P.O. Nalni Tehsil & District Nainital
3- Akran Shah S/o Mustaghafir Sah
R/o Shah Cottage, near Boccharkhana,
Tallital Nainital … Respondents.

Sri Anil Kumar Joshi, learned counsel for the appellant.
Sri Ajai Singh Bisht, Advocate for the respondent-claimants.

(Hon'ble B.C. Kandpal, J.)

This appeal, U/S 173 of the Motor Vehicles Act, 1988, has been preferred by the New India Assurance Co. Ltd., against the judgment and award dated 17-5-2000, passed by the Addl. District Judge/ M.A.C.T. Nainital, in MACP No. 239 of 1998, whereby the claim petition was decreed against the appellant/New India Assurance Company, awarding compensation for Rs. 1,87,500/- along with interest @ 12% per annum from the date of presentation of the claim petition.

2- Brief facts of the case are that on 16-5-1998 at about 10 A.M., Pramod Singh, son of the claimants, was travelling in Bus No. U.P. 02-C/7428 from Mangoli to Village Chauna Tehsil Ranikhet, District Almora. When the bus reached Near Bhujan bend, due to rash and negligent driving of the driver, the bus overturned, due to which Pramod Singh sustained grievous injuries. He was shifted to B.D. Pandey, Hospital Nainital, where he died due to the injuries. At the

time of accident the deceased was 19 years of age and he was earning Rs. 3000/- per month from the work of selling milk. The claimant filed the claim petition before the Tribunal for compensation in lieu of death of their son in the accident.

3- The O.P./ owner of the offending bus filed his W.S. before the Tribunal. He alleged that the bus was being driven at a moderate speed at the time of accident. At the place of accident there was bend and from opposite direction a vehicle was coming at high speed and in order to save that bus the offending bus overturned. It was also alleged that the claimants were not dependent upon the deceased. The bus was insured with New India Assurance Company and the company in liable to pay the compensation, if any.

4- The insurer of the offending bus, New India Assurance Company, filed its W.S. alleging therein that the bus was overloaded. The bus was permitted to carry 43 passengers but at the time of accident there were 80-90 passengers in it, as marriage party was there in the bus. The bus was being driven against the conditions of insurance policy. Therefore, the insurer is not liable to pay compensation.

5- On the basis of pleadings of parties, the Tribunal framed issues. Thereafter parties led evidence in support of their cases. The learned Tribunal on hearing learned counsel for the parties and perusing the evidence on record allowed the claim petition for compensation of Rs. 1,87,500/- along with interest @12% per annum against the New India Assurance Company.

6- Feeling aggrieved, the insurer, i.e. New India Assurance Company filed the appeal before the Allahabad High Court, which has been transferred to this court, after creation of new State.

7- Heard learned counsel for the parties and perused the record.

8- The sole controversy involved in this appeal is whether the bus, bearing registration No. U.P. 2-C/7428, was overloaded at the time of accident or not?.

9- The claimants in order to prove their case, produced, P.W.1, Chandan Singh and P.W.2, Puran Singh Kathait. P.W.1, Chandan Singh was also travelling in the offending bus at the time of accident. This witness has deposed that the driver of the bus, was driving the vehicle rashly and negligently. In his cross examination, this witness has denied the suggestion that the bus was having 80-90 passengers at the time of accident. P.W.2 Puran Singh Kathait, has deposed that the marriage party was consisting of 35-40 persons. Two Maruti cars and one jeep were also with the marriage party.

10- The O.P. Akram Shah, D.W.1, the owner of the offending bus, has deposed on oath that on the day of the accident his bus was booked by Ram Singh for carrying marriage party of his son. He also alleged that at the time of accident there were 40-41 passengers in the bus. This witness also traveled in the bus upto Nainital.

11- On the other hand, the O.P. Insurance Company has produced Mohan Singh Dangwal, D.W.2 in support of its contention. This witness has investigated the matter on behalf of the Insurance Company. This witness has stated that during investigation he had taken statement of Bansi Dhar, Dungar Singh and some other persons, who were travelling in the offending bus. Dungar Singh had alleged to this witness that the offending bus was overloaded. This witness could not produce his licence issued by the R.T.O. as investigator. This fact also could not be established that Dungar Singh was member of marriage party.

12- From perusal of the statements of the witnesses produced by the parties, it is revealed that the opposite party/insurance company could not establish that the offending vehicle was overloaded at the time of the accident. The offending bus at the time of accident was insured with the O.P./appellant New India Assurance Company and its driver

had valid driving licence. I am of the view that the Tribunal was justified in holding that the offending vehicle was not overloaded. I do not find any infirmity and illegality in the finding recorded by the Tribunal.

13- For the reasons aforesaid, the appeal lacks merit and is liable to be dismissed.

14- Accordingly the appeal is dismissed. The impugned judgment and award dated 17-5-2000, passed by M.A.C.T./Addl. District Judge, Nainital, in MACP No. 239/1998, is hereby affirmed.

(B.C. Kandpal, J.)

Dated: 11-12-2006
ISB